



**FOLEY & LARDNER LLP
ATTORNEYS AT LAW**

402 W. BROADWAY, SUITE 2300
SAN DIEGO, CA 92101-3542
619.234.6655 TEL
619.234.3510 FAX
www.foley.com

WRITER'S DIRECT LINE
619.685.6413
srosenbaum@foley.com EMAIL

CLIENT/MATTER NUMBER
056211-0100

August 17, 2005

VIA ELECTRONIC MAIL AND U.S. MAIL

John Robertus
Executive Officer
Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Re: Offer of Settlement; Complaint No. R9-2005-0059 For Administrative
Civil Liability Against JRMC Real Estate, Inc., and Complaint No. R9-
2005-0097 Against City of Escondido

Dear Mr. Robertus:

This Offer of Settlement revises and replaces JRMC Real Estate, Inc.'s ("JRMC") and the City of Escondido's ("City") offer dated August 15, 2005, pursuant to our telephone conference this morning with Regional Board staff members Mark Alpert and Frank Melbourn. The exhibits remain the same. The dates for performance in this offer are based upon the assumption that the Regional Board will review and approve the settlement at its September 14, 2005, Board Meeting, except that the SEP recipient may be determined at a subsequent Board Meeting.

On or about March 10, 2005 the Regional Board issued a Complaint for Administrative Liability ("ACL") against JRMC for stormwater-related violations, ACL Complaint No. R9-2005-0059. The ACL Complaint assesses liability against JRMC in the amount of \$1,260,000. Concurrently, the Regional Board issued an ACL against the City for stormwater-related violations, ACL Complaint No. R9-2005-0097. This ACL Complaint assesses liability against the City in the amount of \$129,000. (Together, "Complaints".)

Without admitting any liability, we have discussed various settlement scenarios with Regional Board staff. Now, we make the following formal offer of settlement on behalf of JRMC and the City (together herein identified as "Dischargers"). This proposal is intended to be a complete settlement of all allegations made in both Complaints. We request that this offer be presented to your Board for their consideration.

BOSTON
BRUSSELS
CHICAGO
DETROIT

JACKSONVILLE
LOS ANGELES
MADISON
MILWAUKEE

NEW YORK
ORLANDO
SACRAMENTO
SAN DIEGO

SAN DIEGO/DEL MAR
SAN FRANCISCO
SILICON VALLEY
TALLAHASSEE

TAMPA
TOKYO
WASHINGTON, D.C.
WEST PALM BEACH

017.270673.4

BACKGROUND

We believe this to be a fair and reasonable settlement offer for the following reasons:

1. JRMC owns a portion of the Escondido Research and Technology Center (the "ERTC"), located within the City of Escondido, San Diego County, California. JRMC filed a "Notice of Intent," as required by Section A.2. of Order No. 99-08-DWQ on January 31, 2003 (WDID No. 9 37C320081) (hereinafter "Initial NOI"). Said Initial NOI provided coverage for those areas described on Exhibit 1 attached hereto.
2. JRMC has corrected its Initial NOI by filing a "Change of Information" statement on or about August 8 2005, to accurately indicate the portions of the ERTC under its ownership or control, and as more fully described by Exhibit 2 (hereinafter "Revised NOI").
3. The Regional Board issued the Complaints on March 10, 2005 alleging numerous violations and discharges. Previously, the Regional Board had issued Cleanup and Abatement Order R9-2004-0420 and notices of violation each of which are incorporated by reference into this offer and attached hereto as Exhibit 3.
4. On or about July 11, 2005 Dischargers submitted an assessment of the Escondido Creek and an unnamed tributary prepared by Merkel & Associates, attached hereto as Exhibit 4, to the Regional Board (hereinafter "Merkel Report"). The Merkel Report concludes that the field observations suggest "little difference in the quality of the water derived from the site and that derived from elsewhere in the watershed."
5. JRMC has brought or by October 3, 2005, pledges to bring the portions of the ERTC site described in the Revised NOI, into substantial conformity with the Order No. 99-08-DWQ, NPDES No. CAS000002 (hereinafter "Permit").
6. The Regional Board contends that consideration of the factors prescribed in California Water Code Section 13385(e) based upon information available to the Regional Board prior to issuance of the Complaints supported assessment of civil liability in the amount of \$1,260,600 against JRMC and \$129,000 against the City.
7. Considering the amount of the proposed penalty, the conclusions of the Merkel Report, and other unique evidentiary issues, Dischargers have informed the Regional Board that they intend to exercise their statutory right to a full formal hearing.
8. By accepting the settlement offer tendered by the Dischargers, involving payment of less than the recommended civil liability without the need for a formal hearing, the Regional Board will conserve valuable staff resources that would have been allocated to preparation for the formal hearing and responding to any administrative or judicial review requested by the Dischargers. Further, the Regional Board would avoid the risk of having the Complaints set aside either at the State Board or judicial stage of review.

OFFER

Considering the factors described above, and based upon discussions with Regional Board staff, the Dischargers make the following offer of settlement.

1. The imposition of civil liability on JRMC in the amount of \$400,000 and the City in the amount of \$50,000 for a total of \$450,000, to be satisfied as follows:

A. Dischargers will pay concurrent with the acceptance of this offer, \$225,000 as a monetary penalty.

B. Dischargers will pay \$225,000 to fund a supplemental environmental project (SEP) to be determined and approved by the Regional Board at a future Board meeting, as between the following two options:

(i) A SEP described as the "Upper Escondido Creek Watershed Exotic Species Control Program" ("Creek Program"). The Creek Program would develop an Invasive Exotic Species Control Plan as approved by Regional Board staff, and would implement actions to control exotic species within the watershed. Regional Board staff oversight will be fully compensated from the SEP amount of \$225,000.00. Attached hereto as Exhibit 5 is a draft proposal for the Creek Program; or,

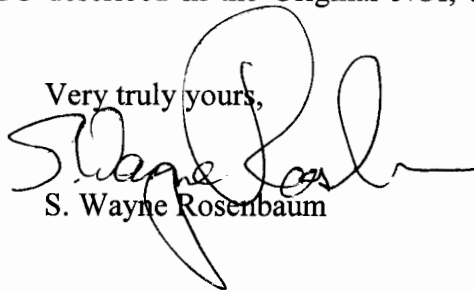
(ii) The full SEP amount of \$225,000 to be applied in a manner and to a recipient mutually acceptable to both JRMC and the Regional Board. If no SEP is selected by December 15, 2005, the SEP amount of \$225,000 will be paid by the Dischargers as a monetary penalty.

2. By October 21, 2005, the City will conduct a root cause analysis to identify those factors that resulted in City's failure to implement, or require JRMC to implement, BMPs during the 2004-2005 rainy season. By November 21, 2005, the City will prepare a corrective action plan addressing any identified factors that resulted in the City's failure to implement, or require JRMC to implement, BMPs during the 2004-2005 rainy season and submit it to the Regional Board.
3. JRMC will ensure that all properties under its ownership or control within the ERTC as described in the Revised NOI, as identified in Exhibit 2, are in substantial conformance with the Permit, as of Monday, October 3, 2005. JRMC will submit to the Regional Board no later than Monday, October 10, 2005, a certification from a qualified professional that the properties within the Revised NOI, as identified in Exhibit 2, were in substantial conformance with the Permit as of Monday, October 3, 2005. The Regional Board will deem that certification conclusive; and JRMC's submission of same shall be deemed full compliance with this Paragraph.

John Robertus
August 17, 2005
Page 4

4. Upon submission of the Certification of Substantial Conformance described in Paragraph 3 above, the Executive Officer shall rescind CAO number R9-2004-0420 issued to JRMC.
5. If JRMC fails to submit the certification described in paragraph 3 above, JRMC will pay a monetary penalty of \$800,000, without appeal.
6. The Regional Board shall consider all NOV's dated prior to September 14, 2005, concerning properties within the JRMC Original NOI, as indicated by Exhibit 1 attached hereto and fully incorporated herein, and Complaints Nos. R9-2005-0059 and R9-2005-0097, as fully settled and resolved. The Regional Board shall deem this settlement to entirely and irreversibly resolve, settle, and dispose of any and all violations alleged in Complaints Nos. R9-2005-0059 and R9-2005-0097, NOV's and the like as of September 14, 2005 as to JRMC and its related entities, the City of Escondido, and all other owners of real property interests within ERTC described in the Original NOI, as identified in Exhibit 1.

Very truly yours,



S. Wayne Rosenbaum

SWR/od

cc: John Minan
Frank Melbourn, P.E.
Mark Alpert